



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

August 25, 2023

Min Liu
Dunhe Road No. 173, Haizhu Dist.
Guangzhou, Guangdong 519000
China

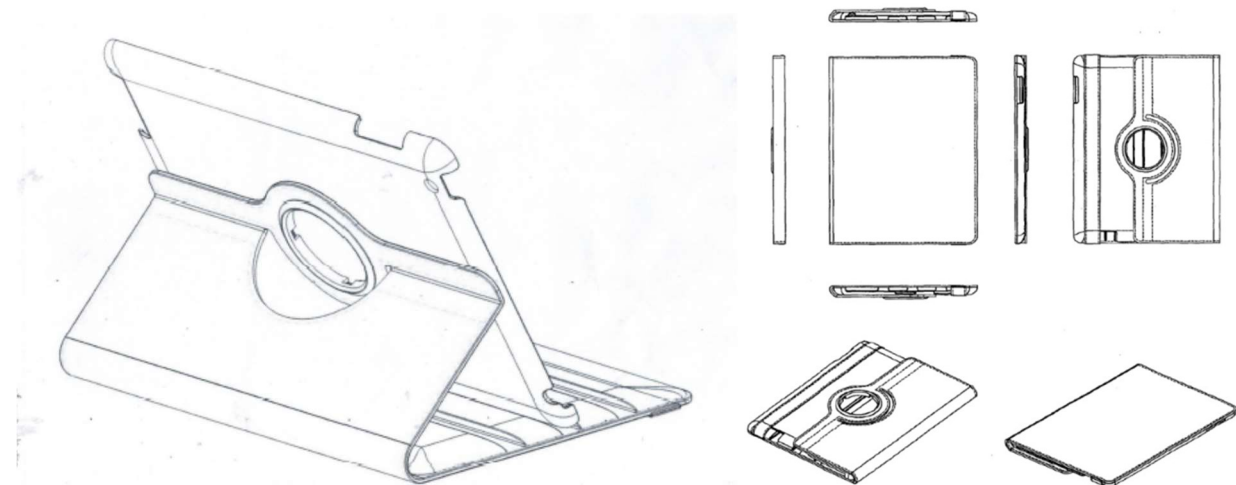
Re: Second Request for Reconsideration for Refusal to Register A protective case for a tablet computer (SR # 1-8741167761; Correspondence ID: 1-4PVCRXM)

Dear Min Liu:

The Review Board of the United States Copyright Office (“Board”) has considered your second request for reconsideration of the Registration Program’s refusal to approve a supplementary registration to amend the claim in the work titled “A protective case for a tablet computer” (“Work”). After reviewing the supplementary registration application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s refusal to amend the claim in the Work.

I. DESCRIPTION OF THE WORK

The Work is a case for a tablet computer. The case is comprised of two parts: (1) a rectangular-shaped holder with raised edges to secure a tablet; and (2) a rectangular folio with three horizontal grooves to mount a tablet. When closed, the front of the case features a circle with conforming and vertical lines on each side. The Work is depicted as follows:



II. ADMINISTRATIVE RECORD

On May 31, 2013, the Registration Program received an application to register a series of drawings titled “DRAWINGS OF A PROTECTIVE CASE FOR A TABLET COMPUTER.” The application identified the claim to copyright as “2-D artwork, [technical] drawing[.]” The Office registered the claim and assigned it registration number VA0001882270.

On April 16, 2020, the Office received a supplementary registration¹ application to amend the information set forth in registration number VA0001882270. Specifically, the supplemental application sought to (1) change the title of the Work from “Drawings of a protective case for a tablet computer” to “A protective case for a tablet computer”; and (2) amend the claim to copyright from “2-D artwork, [technical] drawing[.]” to “2-D artwork, sculpture.” In an August 28, 2020 letter, a Copyright Office registration specialist refused to register the claim, determining that “the work depicted in the drawings is a useful article that does not contain any separable, copyrightable authorship needed to sustain a claim to copyright.” Initial Letter Refusing Registration from U.S. Copyright Office to Yubai Zhao at 1 (Aug. 28, 2020).

On September 23, 2020, the applicant requested that the Office reconsider its initial refusal to register the Work, arguing that once you separate the “4 ARC EDGES” from the Work, the Work is a sculpture without “any function.” Letter from Min Liu to U.S. Copyright Office at 3 (Sept. 23, 2020) (“First Request”). The First Request also asserted that the issuance of a Chinese Copyright compels U.S. registration under the Berne Convention. *Id.* at 3. After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that the Work could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Min Liu (Mar. 16, 2021). The Office explained that, as a useful article, “the case . . . with or without its rounded corners, does not have any separable features.” *Id.* at 1, 3. The Office also explained that, in reaching its registration decisions, the “Office exclusively relies on the U.S. Copyright Act,” and thus, “the issuance of copyright certificate by China is not relevant to [the Office’s] analysis.” *Id.* at 3.

In a letter submitted June 29, 2021, the applicant requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from Min Liu to U.S. Copyright Office (Aug. 8, 2022) (“Second Request”). The Second Request argues that the Work represents the “expressions of the author’s creative ideas.” *Id.* at 2. It contends that the Work’s “‘Z’ type 3D configuration is exactly like a sculpture” that can “exist[] completely and independently.” *Id.* at 2, 9. To illustrate that the functional elements of the Work “can be separated physically,” the Second Request identifies other uses for the Work, including uses as a pen holder or bird feeder. *Id.* at 9, Attach. C at 50–51. Finally, the Second Request notes that the applicant’s Chinese copyright and U.S. design patent demands the issuance of a U.S. copyright registration. *Id.* at 1, 11.

¹ A supplementary registration may be used “to correct an error in a copyright registration or to amplify the information given in a registration.” 17 U.S.C. § 408(d).

III. DISCUSSION

At the outset, the Board notes that the applicant’s original registration, VA0001882270, which identifies the claim to copyright as “2-D artwork, [technical] drawing[,],” is not at issue. Rather, the matter before the Board concerns the applicant’s supplementary registration application to change the claim to copyright from “2-D artwork, [technical] drawing[,]” to “2-D artwork, sculpture.” A supplementary registration may be used to “correct or amend the information that appears on the certificate of registration in the fields/spaces marked Author Created, Limitation of Copyright Claim, Nature of Authorship, and/or Material Added to This Work,” so long as the authorship described in the application for supplementary registration is registrable. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1802.6(J) (3d ed. 2021) (“COMPENDIUM (THIRD)”). Thus, the Board must evaluate whether the applicant’s requested amendment supports a claim to copyright.² After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work is a useful article that does not contain the requisite separable creative authorship necessary to sustain a claim to copyright in “sculpture.”

U.S. copyright law does not protect useful articles, which are “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101 (defining “useful article”). Rather, the Copyright Act protects the design of a useful article “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *Id.* (defining “pictorial, graphic, and sculptural works”). To determine if a particular feature satisfies this requirement, the Board applies the test articulated by the Supreme Court in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, which queries whether the artistic feature “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” 580 U.S. 405, 409 (2017).

Applying this test to the Work, the Board finds that the Work lacks separable features entitled to copyright protection as a work in “sculpture.” The Work consists of a rectangular tablet holder and folio with grooves to mount a tablet. These elements are functional, serving the utilitarian purpose of holding and displaying a tablet computer. When closed, the front of the Work features a circle. This element also has an intrinsic utilitarian function to display the logo that is centered on the back of most tablet computers. These features combine to make up the entire Work. None of these features can be visualized as a work of authorship separate and independent from the Work’s utilitarian purpose, which is to hold, display, and protect a tablet computer. *See id.* at 420 (the identified feature must “qualify as a nonuseful pictorial, graphic, or sculptural work.”).

² The Board does not object to the applicant’s request to amend the title of the Work from “Drawings of a protective case for a tablet computer” to “A protective case for a tablet computer.” *See* COMPENDIUM (THIRD) § 1802.6(C) (“An error concerning the title of the work may be corrected with a supplementary registration.”).

The applicant does not deny that the Work contains useful elements that have an intrinsic utilitarian function. *See* Second Request at 3 (identifying “the four arc edges” as having “the function of fixing the tablet computer”). Rather, the Second Request argues that removing those utilitarian elements results in a work that is entirely non-functional. This argument, however, misconstrues the *Star Athletica* test. To determine if there are “pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article,” the Board must do the inverse of what the Second Request proposes. Instead of separating the utilitarian features from the Work, the Board must try to identify separable pictorial, graphic, or sculptural elements and then determine whether any such elements are entitled to protection. Here, the Work does not have any separable features capable of existing independently of the utilitarian aspects of the Work that are entitled to copyright protection. The “four arc edges” are not the only functional features of the Work. As discussed above, every aspect of the physical Work—the folio, the grooves, the circle, and the rectangular holder (sans arc edges)—serves an intrinsic utilitarian purpose.

The applicant contends that there are at least six features that are separable and warrant copyright protection. However, the features the Second Request identifies as creative are not separable. The “Z’ type 3D configuration” the applicant identifies represents the overall shape of the Work, which cannot be protected. COMPENDIUM (THIRD) § 924.3(F) (“[C]opyright law does not protect the overall form, shape, or configuration of the useful article itself.”); *see Star Athletica*, 580 U.S. at 415 (recognizing that a design feature cannot “be a useful article” in and of itself or “[a]n article that is normally a part of a useful article”), 420 (stating that “some aspects of the useful article” must be “left behind” once the artistic feature has been “conceptually removed” from that article); H.R. REP. NO. 94-1476, at 55 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5668 (noting that copyright protection does “not cover the over-all configuration of the utilitarian article as such”). The “[s]tripe lines 3D aesthetic” merely represents the stitching and structure of the folio and cover, which are functional. The remaining “aesthetics” identified by the applicant as the “eyes,” “Ω,” “multi-layers,” and “myriad of stars surround[ing] the moon” aesthetics are not perceptible from the images provided of the Work. Because the Office will consider only the expression that is fixed in the Work itself and is perceptible in the deposit copy, any “aesthetics” that are not observable do not factor into the Office’s analysis. *See Star Athletica*, 580 U.S. at 423 (“[O]ur inquiry is limited to how [the design is] perceived”); COMPENDIUM (THIRD) § 310.3.

Next, the applicant argues that because the Work can be used for “other occasions,” the Work “can be separated [] both physical[ly] and imagina[tively].” Second Request at 9. To demonstrate the Work’s additional usefulness, the Second Request shows the Work as a pen holder, candlestick, and bird feeder. This argument, however, fails to demonstrate that the decorative features of the Work are separable. Indeed, the Work’s multi-faceted utility provides further support for the Board’s finding that the Work is a useful article without any separable protectible features.

Finally, the applicant urges the Board to use the “process-oriented approach” used by the court in *Pivot Point International, Inc. v. Charlene Products*, 372 F.3d 913 (7th Cir. 2004), when determining if any elements of the Work are separable. *Id.* at 10. In *Pivot Point*, the court considered whether a mannequin sculpture was entitled to copyright protection. Adopting a “process-oriented approach,” which “focus[es] on the process of creating the object to determine

whether it is entitled to copyright protection,” the court held that because the sculpture was created without “specific dimensions or measurements” and “was the product of a creative process unfettered by functional concerns, its sculptural features ‘can be identified separately from, and are capable of existing independently of,’ its utilitarian aspects.” 372 F.3d at 931–32 (quoting 17 U.S.C. § 101 (defining “pictorial, graphic, and sculptural works”)).

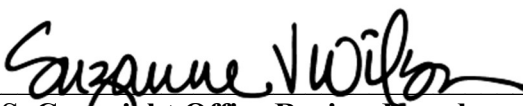
While courts previously used various different tests when analyzing the separability of design elements of useful articles, the Supreme Court set forth the test that should be used in 2017 in *Star Athletica*. As a result, the Office and the Board use the *Star Athletica* test when analyzing designs of useful articles. Moreover, the Work’s very title—“A protective case for a tablet computer”—suggests that it was created for the purpose of protecting and holding tablet computers, which are produced in specific dimensions and measurements. Thus, the creative process for the Work was not “unfettered by functional concerns.”

The applicant’s foreign copyright and U.S. patent registrations do not change the outcome here. The Work must satisfy the eligibility requirements under U.S. law to be registered with the Office. COMPENDIUM (THIRD) § 303 (“To register a work with the U.S. Copyright Office, all applicants — both foreign and domestic — must satisfy the requirements of U.S. copyright law. In determining whether a work is copyrightable, the Office applies U.S. copyright law pursuant to title 17 of the U.S. code . . .”). Further, “the fact that a work may or may not be protected by a design patent . . . is irrelevant” to the determination of whether it meets the requirements of U.S. copyright law. *See id.* § 310.11; *Star Athletica*, 580 U.S. at 424; 37 C.F.R. § 202.10(a), (b); H.R. REP. NO. 94-1476, at 54.

Here, under U.S. copyright law, because the Work does not contain any features that can be identified separately from, or that are capable of existing independently of, the utilitarian aspects of the Work, it is not entitled to copyright protection as a work in “sculpture.”

IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to approve the supplementary registration to amend the claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



U.S. Copyright Office Review Board
Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Jordana Rubel, Assistant General Counsel